

AMENDED IN SENATE APRIL 19, 2007

SENATE BILL

No. 191

Introduced by Senator Padilla

February 7, 2007

An act to add Section 1771.11 to the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 191, as amended, Padilla. Labor compliance programs: approved private entity: remedies.

Existing law requires an awarding body, as defined, that chooses to use funds derived under specified bond acts for a public works project to either initiate and enforce, or to contract with a 3rd party to initiate and enforce, a labor compliance program, as defined, for that public works project.

~~This bill would authorize an awarding body to sue for specified damages in superior court if an approved private entity, as defined, that contracted with the awarding body to initiate and enforce a labor compliance program for a public works project either intentionally or through gross negligence does not competently perform the responsibilities required by statute and state regulations for a labor compliance program. This bill would also authorize an awarding body, aggrieved employee, contractor, or other interested party or a contractor to file a complaint with the Director of Industrial Relations against an approved private entity, as defined, that contracted with the awarding body to initiate and enforce a labor compliance program for a public works project for failing to perform these the responsibilities required by statute and state regulations for a labor compliance program, and would establish administrative procedures to address these complaints.~~

This bill would also authorize the director, under these administrative procedures, to order the approved private entity to return the fees paid by an awarding body and to ~~revoke~~ *suspend* the approval of the private entity to initiate and enforce a labor compliance program ~~in the future~~. This bill would specify that an approved private entity would not be required to pay the same amounts under both a superior court judgment and under the administrative procedures established by the bill *until a petition for revocation of the approval is heard and determined as provided*. This bill would specify that these provisions apply only to contracts that are entered into on or after the operative date of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1771.11 is added to the Labor Code, to
2 read:
3 1771.11. (a) The remedies in this section are available only
4 against an approved private entity.
5 ~~(b) If an awarding body can demonstrate by a preponderance~~
6 ~~of evidence that an approved private entity, that contracted with~~
7 ~~the awarding body to initiate and enforce a labor compliance~~
8 ~~program for a public works project, either intentionally or through~~
9 ~~gross negligence did not competently perform the responsibilities~~
10 ~~required by statute and state regulations for a labor compliance~~
11 ~~program, the awarding body may seek either of the following~~
12 ~~remedies in superior court:~~
13 ~~(1) That the approved private entity shall not be entitled to be~~
14 ~~paid its fees due under the contract by the awarding body.~~
15 ~~(2) That the approved private entity shall be liable to the~~
16 ~~awarding body to return the fees already paid under the contract.~~
17 ~~(c) (1) An awarding body, aggrieved employee, a contractor,~~
18 ~~or other interested party~~
19 ~~(b) (1) An awarding body, aggrieved employee, or a contractor~~
20 may file with the director a complaint that an approved private
21 entity, ~~either intentionally or through gross negligence~~, has not
22 competently performed the responsibilities required by statute and
23 state regulations for a labor compliance program.

1 ~~(2) The director shall provide the approved private entity with~~
2 ~~notice of the complaint and the opportunity to respond to the~~
3 ~~complaint.~~

4 ~~(3) If the director determines that the complaint appears to be~~
5 ~~meritorious and to involve a material failure by the approved~~
6 ~~private entity to perform its responsibilities under statute and state~~
7 ~~regulations for a labor compliance program, the director shall hold~~
8 ~~an evidentiary hearing and shall issue a written decision regarding~~
9 ~~the complaint. The director's decision may order either of the~~
10 ~~following:~~

11 ~~(A) That the approved private entity return all or part of its fee~~
12 ~~to the awarding body, depending on the seriousness of the violation.~~

13 ~~(B) A revocation of the approval of the approved private entity~~
14 ~~to operate a labor compliance program in the future.~~

15 ~~(4) An aggrieved party may obtain review of the director's~~
16 ~~decision by filing a petition for a writ of mandate to the appropriate~~
17 ~~superior court pursuant to Section 1094.5 of the Code of Civil~~
18 ~~Procedure within 45 days after service of the decision. If a petition~~
19 ~~for writ of mandate is not filed within 45 days after service of the~~
20 ~~decision, the director's order shall become final.~~

21 ~~(5) A certified copy of the director's final order may be filed~~
22 ~~by the awarding body in the office of the clerk of the superior court~~
23 ~~in any county in which the approved private entity conducts~~
24 ~~business. The clerk, immediately upon the filing, shall enter~~
25 ~~judgment for the awarding body in the amount shown on the~~
26 ~~certified order.~~

27 ~~(2) Within five business days of receipt of the complaint, the~~
28 ~~director shall provide the approved private entity with a notice of~~
29 ~~the complaint and an opportunity to respond to the complaint. A~~
30 ~~response to the complaint may be filed no later than 10 business~~
31 ~~days after the date the director served the notice of the complaint.~~

32 ~~(3) If the director determines that the complaint appears to be~~
33 ~~meritorious, the director shall hold a hearing in accordance with~~
34 ~~this chapter and shall issue a written decision, including findings,~~
35 ~~regarding the complaint. If the director finds in favor of the~~
36 ~~complainant, the director's decision may order either or both of~~
37 ~~the following:~~

38 ~~(A) That the approved private entity return all or part of its fee,~~
39 ~~if already paid, to the awarding body, depending on the seriousness~~
40 ~~of the violation or violations.~~

1 (B) A suspension of the approval of the approved private entity
2 to operate a labor compliance program, until a petition for
3 revocation of the approval is heard and determined in accordance
4 with Section 1773.5.

5 (4) (A) The director's decision shall be served on all parties
6 and the awarding party pursuant to Section 1013 of the Code of
7 Civil Procedure by first class mail at the last known address of
8 the party on file with the director. Within 15 days of the issuance
9 of the decision, the director may reconsider or modify the decision
10 to correct an error, except that a clerical error may be corrected
11 at any time.

12 (B) The director shall adopt regulations setting forth procedures
13 for hearings under this subdivision.

14 (c) Any party to the complaint filed under paragraph (1) of
15 subdivision (b) may obtain review of the director's decision by
16 filing a petition for a writ of mandate to the appropriate superior
17 court pursuant to Section 1094.5 of the Code of Civil Procedure
18 within 45 days after service of the decision. If no petition for a
19 writ of mandate is filed within 45 days after service of the decision,
20 the director's order shall become final.

21 (d) The remedies provided by this section do not preclude either
22 of the following:

23 (1) Other remedies the awarding body may have under the
24 contract with the approved private entity.

25 (2) Other procedures used by the director to revoke the approval
26 of private entities to operate labor compliance programs for public
27 works projects.

28 ~~(e) Notwithstanding any other law, an approved private entity~~
29 ~~shall not be required to return the same fees under both paragraph~~
30 ~~(2) of subdivision (b) and subparagraph (A) of paragraph (3) of~~
31 ~~subdivision (e).~~

32 ~~(f)~~

33 (e) For purposes of this section, "approved private entity" means
34 a private entity that is approved by the director to initiate and
35 enforce a labor compliance program for a public works project.

36 ~~(g)~~

37 (f) This section is deemed to be part of every contract between
38 an awarding body and an approved private entity to initiate and
39 enforce a labor compliance program for a public works project.
40 This section applies only to contracts for an approved private entity

- 1 to initiate and enforce a labor compliance program that are entered
- 2 into on and after the operative date of this section.

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